

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 57th LEGISLATURE - SPECIAL SESSION COMMITTEE ON JUDICIARY

Call to Order: By **CHAIR JIM SHOCKLEY**, on August 7, 2002 at 9:00 A.M., in Room 137 Capitol.

ROLL CALL

Members Present:

Rep. Jim Shockley, Chair (R)
Rep. Paul Clark, Vice Chair (D)
Rep. Jeff Laszloffy, Vice Chair (R)
Rep. Gilda Clancy (R)
Rep. Aubyn A. Curtiss (R)
Rep. Steven Gallus (D)
Rep. Gail Gutsche (D)
Rep. Christopher Harris (D)
Rep. Linda Holden (R)
Rep. Joan Hurdle (D)
Rep. Brad Newman (D)
Rep. Mark Noennig (R)
Rep. Ken Peterson (R)
Rep. Diane Rice (R)
Rep. Bill Thomas (R)
Rep. Merlin Wolery (R)
Rep. Cindy Younkin (R)

Members Excused: Rep. Jeff Mangan (D)

Members Absent: Rep. Bill Eggers (D)

Staff Present: John MacMaster, Legislative Branch
Pam Schindler, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: HB25, 8/01/2002
Executive Action: HB25, Tabled

HEARING ON HB25Sponsor:

Rep. Shockley-HD 61-Victor, Montana

"An act reducing the General Fund expenditures by providing for the discharge of inmates u[to 1 year before they would otherwise be discharged if a correctional institution or system exceeds its operation capacity; eliminating the requirement that the Department of Corrections reimburse counties for holding new inmates". **EXHIBIT(juh03a01)**

(TAPE NOT WORKING PROPERLY.)

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Proponents:

Diana Koch-Dept. of Corrections, Chief Legal Counsel

What does it mean to sentence someone to Dept. of Corrections? DOC has the ability to place the offender in the most appropriate facility. A judge can recommend where a D.O.C. commit gets placed, cannot order in any particular place. Screening committees help us. Committee members-law enforcement, probation/parole and community members. Where does offender need to go and where for the safety of community. D.O.C. commitment was enacted in 1993. As an alternative to a strict placement in prison. 1997-The Dept. came to the legislature and requested that the anything over 5 years is going to be a commitment to prison. Pre-Release Centers in Missoula, Helena, Butte, Great Falls, Billings. Intensive Supervision Programs in Kalispell, Missoula, Butte, Bozeman and Billings. Added program-Conditional Release. Boot Camp. 1999-790 DOC comfits, 2000-989, 2001-1028. 58.1% as of yesterday had a regular prison sentence. Why? Community safety, pre-release at capacity, intensive supervision program at capacity. More risk to community if there is less supervision. Many prison admissions have already failed. 50% have not failed in a community placement yet, but 50% have. Dept. needs to place some of these commits in a prison. Boot Camp is not always appropriate, very rigorous. DOC has relied on parole for commits. Trying to devise a community placement program to take care of DOC comfits. 883 men like to see them released into the community. 20-25% stop from going into prison. Could put out in an appropriate community placement. When offenders are in the community and they re-offend, can then place in prison. Why HB25? Cannot solve entire problem by working with DOC commits. More prisoners

in prison than budgeted for. Some MSP, MWP that have been committed to prison that may be appropriate to leave prison than these DOC commits. Mechanism to get someone out of prison is what HB 25 is. DOC needs time but does not have. Stop the tidal wave, we need time to do it right. HB 25 is an insurance policy, a last resort.

Rep. Lazloffy (Vice-Chair) limits testimony to 45 minutes.

Beth Brenneman-Legal Director of ACLU of Montana

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Settlement Agreement with the MSP. Inmates are ACLU clients. Overcrowding is real, hot summer. Emergency measure, does not do anything to prevent this from happening in the future. False sense of security. Problem can happen over and over again. Only criteria in bill for what determines someone to be released: only requires individuals within 1 year of discharge can be released. No other criteria are included. Parole board has been circumvented. Suggest this body has the ability to require DOC to specific criteria. Without criteria, DOC is left to their own devices.

Opponents:

Gordon Morris-Montana Assoc. of Counties

There is an amendment to the bill relating to the title and body of the bill. Result have not seen that; it may be the case if looking upon the amendment, I would withdraw my opposition. Title: line 7, eliminating the requirement to reimburse counties. line 9 page 2 through line 19. Do not like; if eliminating the requirement for reimbursement to counties. Page 3, line 1-also a problem. Constitutes a cost shift.

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Tom Esch-County Attorney from Flathead Co.

Oppose early release of felons. Function of government is to provide for citizens security. Accountability. Parole programs-merit, public safety and rehabilitation. No distinction between child molester and for one who is written bad checks. This proposal abandons the promise of truth in sentencing. If this bill goes forward and fails, we will go back to sentence inflation. Talk to judges, advocates and victims and see what they say.

**Dennis Paxinos-County Attorney-Yellowstone County and Montana
County Attorney Association**

This is a "catch and release" program. If you commit a crime, you need to be punished. HB25 does not comply with the Montana Constitution. "Truth in Sentencing" Act says you must serve 1/4 of sentence. Senators asked if was a prosecutors, arguing for only 1/4 of sentences to be served; he stated currently they are only serving 1/10. Judge Baugh sentenced Goodrey to 26 years with 13 yrs. suspended. 10 prior felony convictions. County had "dumped" 4 other felonies. This will be putting the "beans counters" in charge. Like Jack Nicholson said: "you can't handle the truth". Truth in Sentencing bill is "you can't afford the truth".

**Dean Harmon-Montana Association of Counties, president. Also
Roosevelt County Commissioner**

Looked at amendment to this that indicated the counties may not be stuck with the cost shifting action. All 56 counties would be opposed to this bill because of public safety. June 2002, sheriff put on the ballot 4 mills which would have brought in about \$95K, that bill failed. Where do we get the money in an already tight budget if we're not compensated by the state for holding state prisoners? Don't accept them or turn "em loose.

**Dennis McCave-Yellowstone County Sheriff's Office-Captain.
DOC Advisory Committee**

One of 3 dissenting votes on the Advisory Committee that said don't bring this bill to this session. This bill reverses exactly what the statues have been doing in incarcerating criminals under judicial sentence. If DOC is at capacity, they can stop admissions. This is the wrong bill at the wrong time. This needs open debate with law enforcement, courts, victims. This bill needs extensive study.

Bill Kennedy-Yellowstone County Commissioner

I oppose; needs an amendment. Counties can not afford to balance the state's budget. There is a loophole-counties may not be reimbursed.

Wayne Coperider-Montana Sheriffs and Peace Officer's Association

I oppose and 9 other counties have opposed. Puts in hands of one person the release of prisoners. Not enough guidelines-no

"checks and balances". This circumvents the judicial system-an affront victims of these criminals. 50% will re-offend. Increase in workload for parole and probation officers. People who have committed crimes now must pay debt. Public safety issue by the DOC themselves.

Mona Jamison-Gallatin County

Strong opposition to HB 25. Title bill and page 22 line 15-19, basically a cost shift. Please delete the delete. No relationship to the release and the nature of the crime. Definitely over broad delegation in this bill from the legislature to the executive branch.

Jim Smith-Mt. Sheriffs and Peace Officer's Association and Mt. County Attorney's Association

Director Slaughter came to Association before and conceptually talked to us about this. County Attorneys caught flat-footed. Unqualified opposition to HB 25

{Tape : 1; Side : B; Approx. Time Counter : 0 - 326}

Informational Testimony:

None

EXHIBIT(juh03a02)

Questions from Committee Members and Responses:

Rep. Shockley to McCave-We were on the same advisory committee; I don't recall cutting the per diem to counties. Did you? Mr.

McCave-No, it did not. Possible a drafting error.

Rep. Gallus to Koch-What in the heck happened between Billings and now with this bill? This is not what we discussed at the Advisory Council. **Ms. Koch**-That was a mistake; I do have an amendment. It was a drafting error I made. We never intended on

doing anything to payments to the counties. **Rep. Newman to Koch**-Earlier testimony, you indicated the ISP's are full. **Ms. Koch**-

We're working on that community program right now to release more DOC comfits that we are in control of. **Rep. Newman to Koch**-Isn't this bill to much, too soon and doesn't this put the communities at risk? That programming doesn't exist; where are you going to put these people? **Ms. Koch**-What we think at DOC is not too much too soon-it's an insurance policy that we are going to try and do as much as we possible can with the DOC commits to try and do it that way. If that doesn't work and we can't balance the budget, there are people sitting in the MSP that we can't do that with because they're MSP inmates. Some of them may have probation to follow, but we can't put them in the community without this bill.

Rep. Newman to **Koch**-Isn't the determination of DOC commit rather than a prison commit, up to a judge? **Ms. Koch**- Yes. That is correct; it is a judicial call. Whether a DOC commit or a prison commit. **Rep. Newman** to **Koch**-Concerned about lack of criteria; nothing in this bill that talks about the nature of offense, nothing that talks about number of offenses, nothing that talks about the victims. Where in this legislation does the DOC be accountable to the public and victims. **Ms. Koch**-It is not in legislation, the DOC would approve amendments to this to put criteria in.

Rep. Noennig to **Koch**-Are there mechanisms that exist now for transferring inmates into these centers. If it a DOC center, that mechanism does exist, right? **Ms. Koch**-Yes, it does. **Rep. Noennig** to **Koch**-Do you agree that this procedure bypasses the Parole Board? **Ms. Koch**-Yes, to some degree. Parole Board still functions and sees people at an appropriate time and can parole them. People still in prison can be released with this bill even if Parole Board says no. **Rep. Noennig** to **Koch**-Standards for release? Page 2, lines 8 and 9, this is the procedure by which the Director determines the institution exceeds it's operation capacity. Necessity of accommodating new inmates is grounds for declaring a correctional institution or systems exceeds its operation capacity. There are always grounds, missing something? **Ms. Koch**-Defer to Joe Williams, Fiscal Division Administration. **Mr. Williams**-I don't want there to be a disconnect between the budget shortfall we're facing and this policy decision today. Public safety has a price. Correctional (adult) population in the State of Montana has increased, almost doubled in 12 years. The population for the entire State of Montana has gone up 12% in same period. We grew roughly 9% in our male population last year, 12.5% in females last year.

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Deficit grows worse. Ramifications to this; not many viable options to this. If projections continue, we're talking about lay-offs. **Rep. Noennig** to **Williams**-Drafting question. Re: necessity of new inmates. You always have that necessity. **Mr. Williams**, that is exactly correct. We don't want to limit the ability of counties. You're right; we can work on that. **Rep. Keating** to **Koch**-Parole? 1st paragraph. Who determines the time of parole? **Ms. Koch**-Function of the Dept. of Records, one person looks at the prisoner's sentence and then coordinates that with the statute in effect. They determines when eligible. **Rep. Keating** to **Koch**-There is an area of discretion? **Ms. Koch**-There is very little discretion. **Rep. Keating** to **Koch**-If someone is close to parole and has done good time, maybe Parole Board would

act earlier? **Ms. Koch**-That's a good idea. **Rep. Keating** to **Koch**-Not an emergency situation; in a normal course, could be reasonably applied, that up to the Parole Board and DOC. **Ms. Koch**-Would take a statutory change. **Rep. Keating** to **Koch**-There are private prison in Shelby. Are they full? **Ms. Koch**-Defer to **Joe Williams**. **Mr. Williams**-Yes, they are full, Dawson County, Missoula, Great Falls. A number of unserved felony warrants out there due to the capacity of facilities. **Rep. Harris** to **Williams**-Fiscal Note: confused, reimbursement provisions in the bill, the projected savings included the lack of reimbursement. **Mr. Williams**-No, they are from releases. **Rep. Harris** to **Williams**-Why in Section 6-projection of \$4.8M savings but it is for 2003, then in general fund balance net effect is o. **Mr. Williams**-It's not a savings because we have not budgeted for it. **Rep. Harris** to **Williams**-Long term Impacts? **Mr. Williams**-35% recidivism rate, not 50%. **Rep. Harris** to **Williams**-Section 6, \$4.8M savings; where is it? **Mr. Williams**-Payments not made to regional/private prisons. Looking at a prison with empty jail cells. **Rep. Harris** to **Williams**-No layoffs? **Mr. Williams**-Yes-if have to at private prisons? There would be economic impacts. **Rep. Gallus**-Can we continue this later during Executive Action-so that the Committee members have questions and give this bill the proper death this deserves. **Rep. Hurdle**- I object, I have questions. **Rep. Lazloffy**-Will let questions continue for a time.

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Rep. Peterson to **Koch**-Reading this bill; the director after conferring with the governor and the finance committee, makes a determination you reached capacity, is that correct? **Ms. Koch**-Yes. **Rep. Peterson** to **Koch**-After the director has determined that; what are the mechanics of releasing prisoners? **Ms. Koch**-DOC makes the call. **Rep. Peterson** to **Koch**-Is the criteria developed? **Ms. Koch**-No. **Rep. Peterson** to **Koch**-Is this an improper delegation of legislation authority. **Ms. Koch**-No. **Rep. Shockley** to **Slaughter**-What percentage of people in prisons are DOC commits? **Mr. Slaughter**-48%. **Rep. Shockley** to **Slaughter**-Women's DOC commits? **Mr. Slaughter**-70-75%. **Rep. Shockley** to **Slaughter**-Capacity at MSP, 2 Reginald and Shelby? **Mr. Slaughter** capacity is 2800 and we are well over that. **Rep. Shockley** to **Slaughter**-How much would you like to reduce that? **Mr. Slaughter**-This is an emergency option; what other options do I have? And County jails are full? Go to the Governor and bring the "session" back. Or have some "gate keeping" bill or statute. I hope I never have to use this bill. **Rep. Shockley** to **Slaughter**-What is the manageable level? **Mr. Slaughter**-We would use the DOC options and hope we never hit

capacity. Today: MSP has 1341 people in it, designed for 800, can run safely at 1300.

Rep. Hurdle to **Brenneman**-What is the criteria? **Ms. Brenneman**-5 of them: nature of the original offense, 1st offense or one in a series of many, completed their programs in institution and have "clean" conduct in prison, looking at drug offences. **Rep. Hurdle** to **Brenneman**-Risk to community also? **Ms. Brenneman**-Yes.

Closing by Sponsor:

Rep. Shockley-As County Attorney Esch said this bill has some merit, but will have merit in January. If we are going to releasing prisoners for monetary measures; the statues ought to reflect that. Bill provides more control. We do not need to pass this bill now, if ever. DOC commits are there for a maximum of 5 years. Selective. Why not vote for this? Just in hopper on Monday, Aug. 5. I feel we should table this as soon as possible. We can take it up in January.

EXECUTIVE ACTION ON HB25

Motion: **REP. CLARK** moved that **HB 25 DO PASS.**

Motion/Vote: **REP. SHOCKLEY** moved that **HB25 BE TABLED.** Motion carried 16-3 with Gutsche, Hurdle, and Mangan voting no. Eggers absent.

Rep. Younkin-Would like to see this bill in 2003 session with a lot of specific criteria.

Rep. Gallus-Acknowledges Ms. Koch for all of her work.

Rep. Hurdle-Only vehicle for DOC to make cuts-after made such deep cuts in education, human services, etc. should have to bear the burden all by themselves. I don't think we should have a "hands off" for DOC policy. I'm disappointed that DOC should not have to bear some of the cuts. Why should the children bear them disabled?

Rep. Younkin-Reason-It's a public safety matter and that comes first. If DOC can do it and we have the proper criteria to do it then that is the way. Public safety is critical.

Rep. Noennig-By not acting for the reasons that were justified, DOC is running a \$9M deficit; that's a pretty substantial cut.

Rep. Peterson-Letter from the AG's office, discussing a bill re: sexual offender's act?

Rep. Newman-If Senate sends it over, yes, we will see that.

Rep. Hurdle-No one is now or ever suggested that violent criminals should be released; violent prisoners have doubled, non-violent prisoners has tripled, drug offences have increased

11 fold. We need to look at who prisons are filled with. We should never release violent prisoners with victims.

{Tape : 2; Side : A; Approx. Time Counter : 170 - 508}

ADJOURNMENT

Adjournment: 10:32 A.M.

REP. JIM SHOCKLEY, Chair

PAM SCHINDLER, Secretary

JS/PS

EXHIBIT(juh03aad)